Democratic Experiments

In

New Zealand

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Thank you indeed for inviting me to speak at one of the Senate's prestigious public lectures. I am honoured to be here.

Countries like ours—Australia and New Zealand—seem to go through periods of reform and renewal, years, or even decades, when citizens and elites look critically at their democracies, wondering how they can do better. Exactly what happens at these times, what galvanizes people into critical appraisal and action, is not really understood, either by political historians or political scientists. In today's lecture I make a modest contribution towards discussing some interesting New Zealand democratic initiatives, and attempt to go some way towards explaining why and how they have happened. I hope that I tell several good stories because, through story-telling, political science can arouse our curiosity about how societies create, maintain, and often tragically, destroy political order. More than this, though, political science identifies and explains political puzzles: why things turn out differently from expected, and so forth.

Like Australia, Aotearoa New Zealand has experienced times when social, economic and political changes have developed with great rapidity. Like Australia, New Zealand has a perception of itself as a country that is prepared to experiment and innovate. The 1890s and the 1930s are the most often cited periods of radical policy reform. These years were marked by extensive changes to the involvement of the state in economic and social affairs. A similarly reformist period was the 1980s, although this time the changes went in the other direction from that which occurred during the earlier decades: towards shrinking the size and responsibilities of the state, not expanding it, and, in the process, privatizing and commercializing many of its institutions. These public and state sector changes, unfortunately much more sweeping and rapid than were implemented here in Australia, are well-known and are not the subject of today's talk. But they are close relations to the democratic changes that also gained momentum during the 1980s. In short, the sorts of changes of the 1890s, the 1930s and the 1980s were experiments by and about the state: its shape, its scope, its reach into society. Indeed, a famous early book by William Pember Reeves (born in 1857) was entitled *State Experiments in Australia and New Zealand* (1923). I confess I stole this title for today's work, redirecting our attention not to the nature of the state but to its democratic control.

The five experiments, or stories, I want to relate today are:

1. New Zealand's liberal notion of political citizenship;
2. the parliamentary representation of Maori;
3. citizen participation in parliamentary processes;
4. electoral system change; and
5. Citizens' Initiated Referenda (where I also comment briefly on campaign expenditure in general).

And how are these seemingly disparate stories interrelated? I believe they can contribute to our thinking about two important criteria for good government: equal participation for everyone, individuals and groups; and equality of opportunity to influence public policy. A sub-theme which pops up from time-to-time is that of restraining executive power and making governments accountable, but that is really a story for another day.

1. Political Citizenship

First, let us take New Zealand's liberal notion of political citizenship. Like Australia, men were enfranchised comparatively early. Women ratepayers could vote in local elections throughout the whole of New Zealand by 1876, and by the next year they also had the

right to vote and stand for school committees and regional education boards.[1] In 1893, all women over the age of 21 gained the vote, but only after a hard-fought battle involving two nationwide petitions, the 1893 one containing 26,000 signatures, organized by Kate Sheppard and the New Zealand Women's Christian Temperance Union.[2] Maori as well as non-Maori women were involved in the battle for the ballot, but Maori women were fighting also for the right to vote and stand for the Maori Parliament.[3] Women could not stand for Parliament until 1919, however.

Today, all permanent residents of New Zealand are enfranchised: one does not have to be a citizen to vote in an election. This is of course unusual for democracies and oddly enough was an unanticipated consequence of our rather odd reluctance to take full independence when offered this status by the Statute of Westminster 1931. Formal establishment of New Zealand citizenship was not until 1949. But until 1975, the electoral law required electors to be 'British subjects', the situation since 1853. That phrase was deleted in the 1975 amendments to the Electoral Act, simply leaving the residency requirement to be eligible for voting. Today, as the Elections New Zealand website instructs, people are entitled to vote if they are 18 years or older, are New Zealand citizens or permanent residents, and if they have lived in New Zealand for one year or more without leaving the country.[4]

Citizens who have been overseas for more than three years (and who have not returned during that time), are disqualified from voting, as are permanent residents who have been out of the country for more than a year. Also disqualified are certain people detained for mental health reasons, those people who are serving life sentences in prison, a sentence of preventative detention or a sentence of three years or more; and those who have been found guilty of corrupt practices. As can be seen, these are relatively liberal provisions, although they are seldom discussed, let alone boasted about.

Note, however, that full political citizenship is restrictive in that to be eligible for election for Parliament candidates now must be New Zealand citizens.

Incidentally, although New Zealanders must register on the electoral roll—registration is compulsory but compliance is not enforced—voting is voluntary. Despite this, historically New Zealanders turned out in large numbers to cast their ballots, although in recent years the percentage of eligible-age voting has regrettably declined. Professor Jack Vowles from the University of Auckland has documented this trend.[5]

So despite our liberal notion of political citizenship, New Zealand, like many other countries, has some problems with voters' apparent unwillingness to engage with the political process. This is a particular problem with young people, those between 18 and 25 years of age.

2. Maori Representation

The next democratic experiment that I wish to bring to your attention is the story of the political representation of New Zealand's indigenous people, the Maori. Why do I think

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[1] Neill Atkinson, *Adventures in Democracy: A History of the Vote in New Zealand* (Dunedin, University of Otago Press, 2002), p. 84)

[2] Patricia Grimshaw, *Women's Suffrage in New Zealand*, 2nd edn., (Auckland, Auckland University Press, 1987).

[3] Tania Rei, *Maori Women and the Vote* (Wellington, Huia Publishers, 1993).

[4] http://www.elections.org.nz/enrolment/enrolling_detailed_faq.html

[5] Jack Vowles, 'Civic Engagement in New Zealand: Decline or Demise? Inaugural Professorial Address, University of Auckland, 13 October 2005, p. 7.
http://www.nzes.org/docs/papers/Inaugural_2004.pdf

that this is important? Because how countries treat their political minorities is a measure of the extent to which they fulfil the democratic criteria of treating everyone as equal and enabling everyone to have the opportunity to influence political decision-making.

To relate and explain this story involves looking back to a 19th century experiment that encapsulated a flawed, but influential, notion of what constituted fair political representation. In 1867, after debates on Maori male enfranchisement that ranged from the prejudiced and racist to the enlightened and liberal, Parliament decided to create four temporary Maori seats. There are still Maori electorates today. From 1867, all Maori men over the age of 21 could vote. Maori provided a challenge for the constitutional engineers of the 1860s, because land was owned communally. It had seemed that, in contrast to non-Maori men, either all or no Maori men would be enfranchised unless they owned land with individual titles (as a few did). The latter was unacceptable for several reasons, including the Treaty of Waitangi provisions, and the former would produce the equally unacceptable situation (for the settlers) where there would be more Maori than non-Maori voters.[6]

The four seats remained in place until 1996, although they were democratized in important ways, allowing Maori to choose which electoral roll to register on, for example. Maori voters in those four electorates predominantly voted for the Labour Party from 1943 onward, giving Maori an effective voice only when Labour was in government, and effectively cancelling out the Maori vote as a political weapon for Maori to employ at election time. But the impact of the four Maori seats has been of long-lasting historical and constitutional importance. Not least of its significance was that any reforms to the voting system–another of my democratic experiments—could not leave Maori any worse off that they were already: Maori, and the Maori culture, somehow had to be represented in Parliament.

The New Zealand Parliament after the 2002 General Election: Social Composition

	Women	Maori	Pacific	Asian
Labour	18	10	3	1
National	6	1	0	1
NZ First	1	6	0	0
Green	4	1	0	0
ACT	4	1	0	0
United F	1	0	0	0
PCP	0	0	0	0
Total	34 (28.3%)	19 (15.8%)	3 (2.5%)	2 (1.7%)

Under MMP, the number of Maori seats depends on the number of Maori who enrol on the Maori register. After the 2002 general election, the third under the new electoral rules, there were seven Maori seats out of the total 120 seats in Parliament, comprising 51 list MPs and 69 electorate members. The Maori seats are superimposed over the general ones. The number and boundaries of all of the electorates are updated

[6] See: http://www.elections.org.nz/study/history/maori-vote.html

every five years after the census to take account of population changes; and at about that time Maori are asked to opt for either the Maori or general electoral roll. The choice, of course, is entirely up to them.[7]

As a consequence of the last, 2002 general election, the New Zealand Parliament had a more representative social profile than under the previous electoral rules. The new, proportional electoral system changed the face – or should I say the faces – of the New Zealand Parliament. But that New Zealand achieved fair representation of its indigenous people at the end of the twentieth century was at least in part a consequence of those four Maori seats created in 1867 for somewhat shabby political reasons. Group representation had become an important democratic principle in institutional design.

I should also note at this stage that Maori MPs, along with many Maori activists, had protested about their treatment, especially their loss of land, language and culture, ever since the Treaty of Waitangi was signed between the chiefs and the representative of the British Crown in 1840. And a coalition of Maori MPs, Maori protest leaders and non-Maori leaders were to be instrumental in creating a device whereby redress for past wrongs could be achieved. This was the Waitangi Tribunal, a quasi-judicial body that has awarded Maori iwi and hapu substantial sums of money and grants of public lands in reparation of past injustices. This quiet revolution is ongoing. Further, the position of Maori in our polity is recognized in that, since 1987, Maori has been our second language.

On to my next democratic experiments: parliamentary reform, electoral system reform, and the legislation enabling citizens to initiate referendums. Again, some history is needed to help explain the origins of these three experiments.

3. Parliamentary Reform and Public Participation

During the 1960s and 1970s, New Zealand saw a number of significant legislative changes implemented, such as instituting ombudsmen and enacting laws protecting human rights, the Official Information Act, and so forth. The culmination of these sorts of human rights changes was the Bill of Rights Act 1990. Despite this series of reforms regarding the relationship between citizens and the state, the core Westminster institutions remained firmly in place. New Zealand's Parliament was dominated by the cabinet of the governing party. Then, as now, there were no formal countervailing powers to prevent the abuse of office by an overbearing government. New Zealand had no formal veto points, in political science jargon --either in terms of having a federal structure or an upper house. In that sense New Zealand was (and still is) a very different sort of democracy than is Australia. The equivalent of your Senate was abolished in 1950, with only a few constitutionalists regretting its departure. The courts had no jurisdiction over Parliament and cabinet: Parliament was supreme. The triennial elections meant that governments had to face the people relatively frequently, however, and there was a good deal of consultation over policy issues by governments, the saving grace for democratic health. Richard Mulgan has made this point most effectively.[8]

Meanwhile, however, social change was impacting on politics, with feminism, environmentalism, the peace movement, and Maori activism all lively developments that were challenging our understanding of the political and of what might constitute responsive, representative political institutions. And a particular prime minister called

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[7] http://www.elections.org.nz/electorates/n37.html

[8] Richard Mulgan, 'The Democratic Failure of Single-Party Government: The New Zealand Experience', *Australian Journal of Political Science*, 30, 1995, Special Issue, 82-96.

Robert Muldoon also challenged notions of civility and engagement through his authoritarian domination of politics and policy.

Under the leadership of David Lange, the Labour Party, out of power since its brief, single term in the early seventies, returned to government in 1984 with a clearly laid out 'Open Government' policy, and a much less overt set of plans to transform and modernize government and the economy. The first of these goals is not well known, despite its transparency. There were three main direct consequences of Labour's plans for democratic change and one indirect one. The direct ones were: the reform of Parliament; the revival of state responsibility for protecting and furthering the rights of the indigenous people, the Maori, an issue that I've already touched on, and, through setting up a non-parliamentary inquiry into electoral system reform, placing the possibility of that transformation on to the political and public agenda. The indirect consequence was the creation by Labour's successor, the 1990-1993 National government, of another democratic experiment, Citizens' Initiated Referenda.

Robert Muldoon's domination of government and Parliament had put parliamentary reform on Labour's agenda; and winning the nationwide vote but finding themselves with fewer seats than National not once but twice made electoral reform seem desirable. Furthering Maori rights acknowledged Maori voting support for the party and was a further development of reforms initiated by Maori MPs and ministers during the 1970s.

Labour's state and economic reforms were expedited through having the parliamentary numbers to drive change through very fast. The sense of national emergency engendered by financial and constitutional crises in the immediate post-election period also legitimized radical change. In 1990, after six years of breathtaking reforms, Labour was replaced by a National government intent on completing the revolution, including radically reducing the size and character of the welfare system and individualizing industrial legislation.

Both governments—Labour and National— were widely interpreted as having exceeded, or gone against, their electorate mandates. And this led voters to entertain the prospect of changing the electorate system to inhibit the actions of these sorts of high-handed governments.

So there we have the background to the three reforms I shall next outline. Let's go back a little in time and first briefly deal with the reform of parliamentary processes the least controversial democratic experiment but one with far-reaching consequences, especially once MMP was in place.

The reforms instituted in the 1980s included the radical reform of the committee system. Thirteen committees were created, each shadowing particular policy areas and particular government departments, and each with several functions: legislation; scrutiny of the policy, administration and expenditure of government departments; and the power to initiate inquiries. The committees could (and do) rewrite legislation. All legislation except financial measures (and those bills pushed through under urgency) went to the relevant committee. As you can see, these were important provisions for my sub-theme of today, increasing governmental accountability.[9]

But importantly for my main theme of experimenting with democracy, citizen participation in the parliamentary process was increased. And this communication between citizens and MPs continued to develop after MMP was adopted. More MPs and

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[9] See: Geoff Skene, 'Parliamentary Reform', in Jonathan Boston and Martin Holland, eds., *The Fourth Labour Government: Radical Politics in New Zealand* (Auckland, Oxford University Press, 1987), pp. 72-88;

more parliamentary parties made policy debate more arguable and contestable, giving added incentives for citizens to put forward their views and MPs to listen to them.

Today, written submissions on legislation are called for as a matter of routine.[10] Unlike many countries, although committees certainly call on experts and particular interest groups to make submissions, they also seek submissions from any individuals and groups who wish to be involved. Many of those who write submissions also present them orally, although this is up to the discretion of the committee chair. Most hearings of public submissions are held in public. Sometimes there are hundreds of submissions, very occasionally even thousands (presenting committees with real logistical problems). These submissions do affect the final legislation. As far as committee inquiries are concerned, whether a committee will call for public submissions or not rather depends on the matter being inquired into. The norm is to do so. Gradually, the process is being modernized with submissions being put online and, also, videoconferencing being employed. At times, committees conduct hearings outside Wellington.

And the impact on New Zealand democracy? This is three-fold. First, from the evidence of my interviews on this topic, people who know something about a topic are indeed listened to by MPs. Thus citizen participation expands the knowledge of MPs and enhances public discussion of policy issues. Second, at the very least, reading and listening to citizens' views keeps political representatives in touch with voters. Third, the process familiarizes voters with the parliamentary process—it is part of a public educational project, an exercise in active civics, one might say.

And MMP itself? It is high time we looked very briefly at the new electoral system.

4. Electoral System Change

The adoption of a proportional representation system to replace FPP (the first-past-the-post electoral system) has been New Zealand's most radical and well-known democratic experiment. In a referendum of 1993, New Zealanders voted 54% to 46% in favour of changing the electoral system to what we call MMP: the Mixed Member Proportional system. It is very similar to that used in Germany and, more recently, Scotland. In brief, we have two votes, one for our local electorate MP, who is elected by a simple majority, and one for our preferred nationwide party list. After the electorate winners have been decided, the remainder of the 120 seats are distributed amongst the political parties according to their shares of the nationwide, party vote. In order to be eligible for their parliamentary share of seats, parties must either win five per cent of the nationwide vote or, alternatively, win one electorate. The details are easily obtainable from the Elections New Zealand website.

And has MMP improved New Zealand's democracy? In my view it has. Briefly:

- Minor parties are now present in Parliament representing voices hitherto muted by their lack of public presence, profile and authority. At present there are eight parliamentary parties. There are the two, traditional, large parties of the centre-left and centre-right, Labour and National. There are middling-sized parties that go right across the political spectrum: the Greens, United Future, New Zealand First, and Act. And then there are two tiny parties: the two-man Progressives and the one-woman Maori Party MP.

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[10] See: http://www.clerk.parliament.govt.nz/Programme/Committees/PressReleases/17jun05.htm

- People from different social groups are now better represented. I have already pointed out that Maori representation has increased as a result of MMP. The representation of other ethnic minorities, and women, has also gone up, although both these groups have still some way to go to achieve full proportional representation.
- Governments can no longer push legislation through the House, relying on their majority support to do so (even though they were almost always elected on the basis of a minority of nationwide votes). Coalitions mean consultation; and the minority governments that we have had for almost the whole MMP period have meant that governments have had to negotiate with other parties and form informal coalitions in order to pass legislation. In my view, this is a good thing, in part of course because there is no upper house. Slower is better, as is consultation across parties, although there is an alternative viewpoint on this matter, nostalgia for the days when single parties in government could count on being able to enact their policies by holding on their own a majority of parliamentary seats.
- The larger House, with the wider range of parties, has meant that the select committee system, already armed with substantial paper powers by the reforms of the 1980s, has the political numbers to amend government legislation, scrutinize government departments, and inquire into policy and administration.

There is a downsize to all these democratic gains, though: for the first two terms governments were much less stable than they had been between 1935 and 1993, and there was much party hopping. The last government, however, has endured since the 2002 election. There have been only two departures from their political parties: an Act MP, and Tariana Turia who left Labour over an issue relating to Maori rights. Turia formed the Maori Party which almost certainly will gain seats at this coming general election. Turia's formation of the Maori Party is in one sense a healthy development, with Maori using the new electoral rules to pursue their interests. In another sense, though, it shows that New Zealand still has a long way to go before there is a truly bicultural democracy.

And now to my fifth democratic experiment.

5. **Citizens' Initiated Referendums**

In 1993, an act of Parliament enabled citizens who collect a minimum of ten per cent of signatures in support of their petition to compel governments to hold a referendum on that issue. Supporters of a particular referendum have twelve months in which to collect their signatures.

No more than NZ$50,000 may be spend promoting their petition; and $50,000 is also the ceiling on promotion of the referendum. These constraints build on a good although imperfect tradition in New Zealand politics whereby expenditure on campaigning is limited by law. In general elections, for example, there is a limit of $20,000 (including GST) on the election expenses of every electorate candidate in the three months immediately before election day. And within 70 days after the election candidates must send a return of expenses and expenditure to the Chief Electoral Officer. This return must include substantial donations to the candidate. Further, registered political parties are limited in how much they can spend to promote their party and their party list. Parties can spend up to $1 million, plus $20,00 for each electorate contested. Again, after the election, the elections expenses must be reported. Donations above $1000 for a candidate and above $10,000 for a registered party must also be disclosed. Thus the expenditure limitations for referendums are in

tune with other legislation. But of course referendums and elections are rather different from one another since the latter are more competitive situations than the former.

Note that the results of the referendums are 'indicative' only: they are not binding on Parliament or government. So this experiment is not so much about direct democracy as about the power of numbers to influence rather than compel decision-makers to do what is apparently desired by the majority of voters.

The origins of Citizens' Initiated Referenda were in the National Party, many of whose supporters were dismayed by actions of the 1984-1990 Labour government, including measures such as decriminalizing homosexuality. I should add that New Zealand has a history of referendums, but most were on liquor licensing (1911-1989). There were also constitutional polls, dating from the Electoral Act 1956.

Between 1993 and October 2002 there were 27 attempts to collect sufficient signatures to hold a referendum. Only three went to referendum:

- 1995: Should the number of professional firefighters employed full-time in the NZ Fire Service be reduced below the number employed on 1 January 1995? (Yes: 12.2 per cent; No: 67.6 per cent)
- 1999: Should the size of the House of Representatives be reduced from 120 members to 99? (Yes: 81.5 per cent; No: 18.5 per cent)
- 1999: Should there be a reform of our justice system placing greater emphasis on the needs of victims, providing restitution and compensation for them and imposing minimum sentences and hard labour for all serious violent offences? (Yes: 91.8 per cent: No: 8.2 per cent)

At the moment, there is a petition to change our flag.

And what can be said of this democratic experiment? First, even indicative referendums have the potential to harm minorities. Second, complex policy issues cannot easily be couched in yes/no terms: they need public debate and discussion. Third, when governments do not respond to indicative referendums (as with the 99 MPs referendum), then public disillusionment can increase. Fourth, money can defeat good arguments, even with our laudable spending limits on those who are pushing for policy change through public referendums. This is because there is no systemic way under our law for the opposing case to be funded, meaning that the arguments become asymmetrically advocated. No, in my view this is an unsatisfactory democratic experiment, and referendums should be reserved for constitutional issues.

All in all, New Zealand's recent experiments have been a mixed package.

Why and How

How can we explain the recent rash of democratic experiments?

It is tempting to explain periods of political and institutional change in terms of some kind of historical journey, perhaps, for example, using a train metaphor. The train leaves the station and travels along steadily, then it slows down, goes in fits and starts because the rails are buckling in the heat, races down an incline, only to come to a standstill at the next station. And so forth. Political systems are not quite like this. But there's some truth in the train metaphor, because certainly democratic political systems move along historically determined tracks, and then for some reason change direction: the points shift. What are these 'points' (and note that we are not talking about actual derailment here, for example a revolution that turns a democracy into some kind of authoritarian state)?

Certainly some potentially far-reaching changes can occur incrementally and even pragmatically, as a series of quite small decisions that can add up to fundamental system

change, as did the evolution of the idea of political citizenship and the institutionalization of Maori representation through the Maori seats, for example. Other, more immediately radical changes seem to occur as a result of a number of factors that come together. First, a democratic system exhibits some underlying problems—a marked disproportionality in election results, perhaps. Then certain events prove to be precipitating factors—a political scandal or rort, for example, or a government that is seen to be acting in an authoritarian manner. Even then, however, a remedy to the problem identified may not appear, because somehow the issue has to move from the public to the governmental and parliamentary agenda. It is at this stage that policy and constitutional entrepreneurs play a role, agitating in their own parties and governments, arguing that it is in the interests of their party to move on the issue. And so we get democratic change, although its radicalism is often muted by compromises through bargaining and negotiation. It also helps to have an uncodified constitution because then there are a number of issues that are unprotected by constitutional bulwarks by having to be passed by referendums or be approved by three-quarters of all MPs (which even in New Zealand is required for some aspects of the constitution).

So New Zealand's democratic experiments can give us some idea of how democracies can change. But what of the consequences of those five experiments? How do we judge this mixture of large-scale and quite small-scale political experiments? On balance, I believe, they have made individuals, groups and political parties more equal with one another, and they have increased public participation in the political process. Nevertheless, at the same time there are warning signs of disillusionment and a lack of interest in politics, as there are in all the 'old' democracies. It will be interesting to see how long it takes before the next democratic experiment begins.